

functionality and essential operational motion is common to both Species. There is no significant difference in functionality or in essential operational motion between the two Species in their most basic form, as expressed in Claims 3 and 4, there is only a variation in the mechanism which provides the essential relative motion and resulting novel functionality. No patentably significant advantages of one Species over another are claimed, nor present, and thus neither Species would be patentable over the other. As such, they cannot be considered distinct from each other.

The generic Claim 1 is well supported by the presence of both Species within a single patent. Without both Species present, the generic Claim 1 would appear to be overreaching, and could invite challenge. It would be difficult, if not impossible, to write a more specific generic claim that would read on both Species without being unduly narrow in scope. Conversely, without the allowance of generic Claim 1, a competitor would find it an easier matter to utilize a mechanism providing slightly different operational motion to provide the necessary relative height variability between a binding and an unbound shoe supporting surface without infringing Applicant's claimed invention, which was restricted to the types of operational motion present only in the two Species. Allowance of generic Claim 1 would offer far better protection against competitors' arbitrary mechanisms which would provide the same novel functionality but designed solely for the purpose of avoiding infringement of this patent. As such, the value of this patent (if granted), so limited, could be greatly diminished, possibly so much as to be of little value.

Applicant wishes also to point out that Species I and Species II represent two of many design variations pursued by a Applicant in the course of invention, some of which are mentioned in the Conclusions, Ramifications and Scope section of the application, to which only the generic Claim 1 is readable upon. In particular, a variant is described which combines the novel features of both Species to produce a pedal with shorter overall height. The patentability of this variant over the two named Species is arguable, as its advantages are minor, and possibly attainable by making small dimensional changes in either the two Species, yet there is no doubt that, should either named Species be allowed in this Application, the variant would also merit allowance, as a substitution. Disallowance of generic Claim 1, and the subsequent division of this Application could lead to a situation whereby patent protection would be denied to the variant.

Applicant also wishes to indicate that Species II represents a design that is not as far advanced in detailed design as Species I. This may have the effect of making the two Species look more different from each other than they fundamentally are. Also, the design of the (unbound) shoe supporting surfaces differ markedly between the two Species, possibly adding to a perceived substantial difference, yet, as mentioned in the Description, the nature of these shoe supporting surfaces are not essential to the invention, and they are easy (and obvious) to modify.

Conclusion:

For the reasons given above, applicant respectfully submits that all Claims and Species are allowable, and that all claims, including and especially Claim 1, define patentability over the prior art. Therefore, applicant submits that this application is now in condition for allowance, which action applicant respectfully solicits.

Very Respectfully,



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